IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 10TH OCTOBER 2007 / 18TH ASWINA 1929

WP(C).No. 4729 of 2007(K)

OS.274/2002 of PRL.M.C., KOCHI
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PETITIONER:

DINESHAN, AGED 45 YEARS,
S/O.NATARAJAN, RESIDING AT C.C.10/1024,
(NEW NO.25/1192), AMARAVATHY, FORT KOCHI,
KOCHI-682 001.

BY ADV. SMT.JAYASREE MANOJ

RESPONDENTS:

RADHAKRISHNAN, AGED 65 YEARS,
S/O.KATHIRVELU, RESIDING AT C.C.NO.10/1023,
(NEW NO.25/1191), AMARAVATHY, FORT KOCHI,
KOCHI-682 001.

BY ADV. SRI.T.A.NARAYANAN NAIR
SRI.SHIVSHANKAR RAO

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

tss

W.P.(C) NO.4729/2007

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE PLAINT IN OS. NO.274/02 OF THE MUNSIFF COURT KOCHI.

EXT.P2:- COPY OF THE WRITTEN STATEMENT IN OS. NO.274/02 OF THE MUNSIFF COURT KOCHI.

EXT.P3:- COPY OF THE IA. NO.981/06 IN OS. NO.274/02 OF THE MUNSIFF COURT KOCHI.

EXT.P4:- COPY OF THE COUNTER AFFIDAVIT IN IA. NO.981/06 IN OS. NO.27402 OF THE MUNSIFF COURT KOCHI.

EXT.P5:- COPY OF THE ORDER DT. 29/8/06 IN IA. NO.981/06 IN OS. NO. 274/02 OF THE MUNSIFF COURT KOCHI.

/TRUE COPY/

P.A. TO JUDGE

tss

M.N. KRISHNAN, J.

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W.P.C. NO. 4729 OF 2007

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Dated this the 10th day of October, 2007.

J U D G M E N T

This writ petition is preferred against the order of the Munsiff, Kochi in I.A.981/06 in O.S.274/02, which was an application for amendment of the plaint by incorporating additional particulars and seeking reliefs in tune with the report of the Commissioner. The basic objection raised by the writ petitioner is to the effect that a building has been constructed earlier and the contention that it is against the provisions of the Building Rules cannot be entertained at this stage for the reason that it is barred by limitation.

Heard the learned counsel for the respondent as well. The respondent's counsel makes it clear that the suit is one for recovery of possession of the property on the strength of title and also for a mandatory injunction and permanent injunction with respect to the property which is sought to be

recovered and for demolition of the structures standing in that property which if proved to be that of the plaintiff, is to be removed by the defendant. I find that the question raised by the learned counsel for the writ petitioner does not loom large at all in this case for the reason that what the plaintiff wants is recovery of possession of the property claimed by him on the strength of his title and demolition of the structures which according to him is in that property and for a prohibitory injunction. I think, by the proposed amendment, no valuable right of the defendant is taken away and it will not change the character of the suit and it is further necessary for the proper determination of the suit between the parties. Of course, what ever contention the defendants want to raise they can also raise in the form of additional written statement. So in the light of the above discussion, I do not find any ground to interfere with the order passed by the learned Munsiff. Therefore the writ petition is dismissed.

M.N. KRISHNAN, JUDGE.

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